



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Red Door Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNQ

### Introduction

This was a hearing with respect to the tenant's application to cancel a two month Notice to End Tenancy given on the ground that the tenant does not qualify for subsidized housing. The hearing was conducted in person at the Residential Tenancy Branch office in Burnaby. The tenant attended with his advocate and the landlord's representative was present. The hearing was originally scheduled to be heard by conference call on October 2, 2015. The hearing was adjourned and rescheduled to be heard today as an in person hearing, due to the tenant's hearing difficulties.

### Issue(s) to be Decided

Should the Notice to End Tenancy, given on the ground that the tenant does not qualify for a subsidized rental unit, be cancelled?

### Background and Evidence

The rental unit is a three bedroom apartment in the landlord's housing complex in Coquitlam. The rental property provides subsidized housing to families. The tenancy began in April, 2006. The tenant lived in the rental unit with his two children until 2011. In 2011 the tenant lost custody of his children and they were placed in foster care. Since then the landlord has notified the tenant by letter on a number of occasions that because his children are no longer living with him, he does not qualify for subsidized housing in the three bedroom unit that he occupies. The landlord has extended the deadline for him to move from the rental unit on a number of occasions since 2011 because the tenant was taking steps to have the children returned to his custody.

The landlord served the tenant with a two month Notice to End Tenancy dated July 16, 2015. The Notice was given because the landlord alleged that the tenant does not qualify for subsidized housing. The Notice to End Tenancy required the tenant to move

out of the rental unit by September 30, 2015. The landlord served the tenant with the Notice to End Tenancy on July 18, 2015. In an accompanying letter to the tenant the landlord said:

As you've been informed many times since you do not have your children, you no longer qualify for housing with (name of landlord). Unfortunately (name of Landlord) is family housing and you must have your children living with you in order to qualify for housing with us.

Even though you were considered as an over-housed Tenant since 2011 we had continued to extend your tenancy during all the child custody proceedings. Due to the fact we have already extended all possible deadlines over the past few years, we are no longer able to extend it any further.

The landlord's representative testified that the tenant pays \$275.00 per month for a three bedroom apartment and two of those bedrooms are unused and vacant because the tenant no longer has custody of his children. The rental property exists to provide subsidized housing for families and the landlord has qualified families waiting for a vacancy at the rental property. The landlord requested that an order for possession be granted to provide a fixed date when the tenant must move out. The landlord's representative suggested that the tenant should move out on October 31<sup>st</sup>, 2015.

The tenant testified at the hearing that the court has granted him reasonable access to his children and he sees them several times a week. He said that he has another hearing concerning his access rights that will take place on October 29, 2015. He provided a copy letter from his lawyer confirming that the hearing with respect to access to his two children is scheduled for 9:00 A.M. tomorrow.

The tenant said that he is severely disabled and he has had difficulty finding other suitable housing. He said that he does not qualify for subsidized housing for seniors because he is not old enough and such housing would not allow his children to stay with him on the occasions when he has overnight access.

The tenant requested that if the Notice to End Tenancy is upheld that he be given some additional time to find other housing and to move because he is limited by his disabilities and his lack of income.

### Analysis

The tenant has not had custody of his children since 2011. I accept his testimony that he has been granted reasonable unsupervised access to his children and that there is a hearing scheduled to address the scope of his access that is set for hearing tomorrow. There is no evidence that the hearing will alter the tenant's custodial rights to his children. The landlord's evidence has satisfied me that the tenant does not qualify for subsidized housing in the rental unit because the subsidy is predicated upon the occupancy of unit by the tenant and his children. The tenant has been the sole occupant since 2011, apart from visits by his children pursuant to his access rights. The tenant is not the custodial parent and the children do not reside with him. The tenant's three bedroom unit is required for another family and I find that the Notice to End Tenancy should not be cancelled and the tenant's application is therefore dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
  - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. The landlord's representative acknowledged at the hearing that the tenant will need time to secure other housing and she agreed that the tenant should have until November 30<sup>th</sup> to find suitable housing. Pursuant to section 55 I grant the landlord an order for possession effective November 30, 2015 after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

The tenant will likely be seeking placement in a subsidized rental unit. The order for possession granted to the landlord requires him to move by November 30<sup>th</sup> and his need for alternative housing is urgent. The tenant will likely present this decision to a housing authority to make them aware of his deadline for securing new housing.

Conclusion

The tenant's application has been dismissed and the landlord has been granted an order for possession effective November 30<sup>th</sup>.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 28, 2015

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Residential Tenancy Branch

